



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

[Docket No. FHWA-2016-0031]

Application from the State of Utah to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed MOU and request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed an application from the Utah Department of Transportation (UDOT) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act of 1969 (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the application to be complete and developed a draft MOU with UDOT outlining how the State would implement the program with FHWA oversight. The FHWA invites the public to comment on UDOT's request, including its application and the proposed MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Please submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Facsimile (Fax): 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Edward Woolford, Right of Way and Environmental Manager, Federal Highway Administration Utah Division, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84129, 7:00 AM – 4:30 PM (MT), (801) 955-3524, Edward.Woolford@dot.gov.

Brandon Weston, Director, Environmental Services, Utah Department of Transportation, 4501 South 2700 West, PO Box 148450, Salt Lake City, UT 84114, 8:00 AM – 5:00 PM (MT), (801) 965-4603, brandonweston@utah.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Federal Register's home page at <http://www.archives.gov>. An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov/>.

Background

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of the U.S. Department of Transportation (Secretary) to assign, and a State to assume, responsibility for all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal-aid highway projects within the State pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Under the proposed MOU, FHWA would assign to the State, through UDOT, the responsibility for making decisions on the following types of highway projects:

1. Highway projects within the State of Utah that are proposed to be funded with title 23 funds or otherwise require FHWA approval, and that require preparation of an environmental impact statement (EIS) or environmental assessment (EA) with the

exception of the following EIS project: West Davis Corridor EIS – This project is in UDOT Region 1 in western Davis and Weber Counties.

2. Highway projects qualifying for categorical exclusions (CE) within the State of Utah that are proposed to be funded with title 23 funds or that otherwise require FHWA approvals, and that do not qualify for assignment of responsibilities pursuant to the MOU for environmental review assignment for projects qualifying for CEs (23 U.S.C. 326 MOU) executed on June 30, 2014.

3. Projects funded by other Federal agencies (or projects without any Federal funding) that also require FHWA approvals. For these projects, UDOT would not assume the NEPA responsibilities of other Federal agencies. However, UDOT may use or adopt other Federal agencies' NEPA analyses consistent with 40 CFR parts 1500 – 1508, and DOT and FHWA regulations, policies, and guidance.

4. Excluded from assignment are highway projects authorized under 23 U.S.C. 202, 203, and 204 unless the project will be designed and/or constructed by UDOT, projects that cross State boundaries, and projects that cross or are adjacent to international boundaries.

The assignment also would give the State the responsibility to conduct the following environmental review, consultation, and other related activities for project delivery:

Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any conformity determinations

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- Compliance with the noise regulations in 23 CFR part 772

Wildlife

- Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Fish and Wildlife Coordination Act, 16 U.S.C. 661– 667d
- Migratory Bird Treaty Act, 16 U.S.C. 703 –712

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9601-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101, et seq.
- Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 470aa – 479mm
- Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508

- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201– 4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387 (Section 401, 402, 404, 408, and Section 319)
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f – 300j–26
- Rivers and Harbors Act of 1899, 33 U.S.C. 401, 403-04, and 406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921
- Wetlands Mitigation, 23 U.S.C. 119(g), 133(b)(14)
- Flood Disaster Protection Act, 42 U.S.C. 4001– 4130
- General Bridge Act of 1946, 33 U.S.C. 525 – 533
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part

777

Parklands and Other Special Land Uses

- 23 U.S.C. 138 and 49 U.S.C. 303 (Section 4(f)) and implementing regulations at 23 CFR part 774

- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302-200310

FHWA-Specific

- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Executive Orders Relating to Highway Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR sections 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species.

The MOU would allow UDOT to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the listed laws and executive orders. The UDOT will continue to handle routine

consultations with the tribes and understands that a tribe has the right to direct consultation with the FHWA upon request. The UDOT also may assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the consultation.

The UDOT also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506), or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

A copy of the proposed MOU may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on UDOT's Web site at:

<https://www.udot.utah.gov/go/nepaassignment>.

The FHWA Utah Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final MOU approved by FHWA may include changes based on comments and consultations relating to the proposed MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.101-139; 23 CFR 773.109; and 40 CFR 1507.3.

Issued on: November 9, 2016.

Gregory G. Nadeau
Administrator
Federal Highway Administration

[FR Doc. 2016-27507 Filed: 11/15/2016 8:45 am; Publication Date: 11/16/2016]